



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.588 of 2021

E.Jabar Khan ... Petitioner/Petitioner/Defendant
vs.

Arokiadoss ... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to call for the records pertaining to the order dated 13.03.2020 made in I.A.No.1 of 2019 in O.S.No.40 of 2008 on the file of the Principal Subordinate Judge, Tiruchirappalli and set aside the same.

For Petitioner : Mr.K.Arunraj

ORDER

This Civil Revision Petition has been filed to call for the records pertaining to the order dated 13.03.2020 made in I.A.No.1 of 2019 in O.S.No.40 of 2008 on the file of the Principal Subordinate Judge, Tiruchirappalli and set aside the same.

2.The respondent/plaintiff filed a suit in O.S.No.40 of 2008 against the petitioner/defendant for recovery of money where the petitioner/defendant has filed his written statement. In the above said suit, the revision petitioner was called absent and set exparte and exparte decree was passed on 17.12.2011. Thereafter, the revision petitioner has filed an application in I.A.No.1 of 2019 to condone the delay of 2781 days in filing the restoration petition. After hearing the case, the learned Principal Subordinate Judge, Tiruchirappalli had dismissed the I.A.No.1 of 2019 on 13.03.2020, against which, the present revision petition.

3.The learned counsel for the petitioner/defendant would state that the revision petitioner has got good case on merits and the Court below ought to have taken pragmatic view in considering the delay condonation petition and instead of throwing the matter on technicalities, the Court below ought to have condoned the delay to enable the revision petitioner to contest the suit on merits. Thus, he would pray to set aside the impugned order.



4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. Perusal of record shows that the suit has been filed for recovery of money which was dismissed for default on 17.12.2011 due to the non appearance of the revision petitioner/defendant. To set aside the same, the petitioner has filed an application along with Section 5 application to condone the delay of 2781 days in filing the restoration petition stating that his lower Court counsel namely Mr.P.Sathishkumar advised the petitioner to meet him, when he made request through letter by considering the petitioner's age ailments and till 2019, no letter was received from the said Mr.P.Sathishkumar, in the meanwhile, the petitioner has received notice in E.P.No.21 of 2019 and after that, he went to the counsel office, at that time only, he came to know about his counsel demise. Thereafter, the present counsel only explained the position of the case and informed that E.P is pending against him and thereafter, the petitioner filed I.A.No.1 of 2019 to condone the delay of 2781 days in filing the restoration petition. The learned Judge finding that though the exparte decree has been passed as early as on 17.12.2011, after a period of 9 years, the petitioner has come forward with a delay petition to condone the delay of 2781 days in filing the restoration petition and he has not proved the same by producing any documentary evidence has rightly dismissed the I.A to condone such a huge delay, where I do not find any infirmity. The reasons stated for the delay are not acceptable reasons. It is a clear abuse of process of the Court and it has to be dismissed with heavy cost. The principles enumerated in the Judgment reported in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & others, [2013 (5) CTC 547 (SC) : 2013 (5) LW 20]**, is squarely applicable to the present facts and circumstances of the case.

6. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)



To
The Principal Subordinate Judge
Tiruchirapalli.

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